

Simpson Thacher & Bartlett LLP

425 LEXINGTON AVENUE
NEW YORK, NY 10017-3954

TELEPHONE: +1-212-455-2000
FACSIMILE: +1-212-455-2502

Direct Dial Number

212-455-3070

E-mail Address

Brooke.Cucinella@stblaw.com

BY ECF

April 8, 2022

Re: **United States v. Burgess, et al., 18 Cr. 373 (RJS)**

Honorable Richard J. Sullivan
United States Circuit Judge (Sitting by Designation)
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

IT IS HEREBY ORDERED THAT the parties shall appear before the Court for oral argument on Wednesday, April 27, 2022 at 10:00 a.m. in Courtroom 21C at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York 10007.

Dear Judge Sullivan:

SO ORDERED:

Dated: 4/8/22


RICHARD J. SULLIVAN
U.S.C.J., Sitting by Designation

Pursuant to the Court's September 27, 2021 Memo Endorsement (ECF No. 868), we represent Ernest Murphy in the above-captioned matter as appointed counsel in connection with Mr. Murphy's Rule 33(b)(1) motion.

We write to respectfully reiterate Mr. Murphy's request to hold oral argument on his Rule 33 motion, as the defense believes that it is in the interest of justice, especially in light of the sur reply letter filed by the Government last night. While we will not reply to the bombastic rhetoric in that filing, we simply seek argument where, among other things, we believe that the Court should have the opportunity to inquire about certain topics raised in the parties' briefs. Chief among such inquiries is the Government's explanation in its most recent letter (ECF No. 941) that it never contended that the 2013 Gun "was possessed 'in furtherance' of the conspiracy." Instead, the Government argues that it merely sought to introduce the 2013 Gun as evidence of Mr. Murphy's purported role in the conspiracy because "the defendant was in a position to command a coconspirator to pick up the gun and to threaten retaliation for noncompliance."

As the Court is undoubtedly aware, this simply does not square with the Government's position in either its written motions or during the August 2, 2019 hearing on motions *in limine*, as it sought to call at trial a DNA expert (Tr. 4:22-5:16) and ballistics expert (Tr 7:17-11:24)—witnesses that are customarily introduced to prove up possession and that a bullet was fired from the gun. Presumably, the Court would also seek to inquire whether a limiting instruction was given to the Grand Jury on the 924(c) charge, or if, at any point, the Grand Jurors were told that it was not the Government's position that Mr. Murphy

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was a member of the conspiracy that they were charging (which purportedly ran from 2011 to 2018) at the time his DNA was associated with a 2013 Gun.

We thank the Court for its consideration of our request.

Respectfully submitted,



Brooke E. Cucinella

cc: AUSA Elinor Tarlow (*by ECF*)
AUSA Jun Xiang (*by ECF*)
AUSA Matthew Hellman (*by ECF*)